

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JUANITA J. GAROFALO,

Plaintiff,

v.

TACO BUENO, L.P.,

Defendant.

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Civil Action No. 3:14-cv-02616

**DEFENDANT'S APPLICATION FOR REASONABLE EXPENSES AND
ATTORNEYS' FEES RELATING TO ITS MOTION TO COMPEL**

Defendant Taco Bueno Restaurants, L.P., incorrectly named as Taco Bueno, L.P., ("Defendant" or "Taco Bueno") files this Application for Reasonable Expenses and Attorneys' Fees Relating to its Motion to Compel ("Application") and would respectfully show as follows:

**I.
INTRODUCTION**

On February 19, 2015, United States Magistrate Judge Irma Carillo Ramirez entered an Order (the "Order") granting Defendant's Motion to Compel Discovery and Brief in Support, filed January 29, 2015 (the "Motion"). The Order states that Taco Bueno may file an application for its reasonable expenses and attorney's fees incurred in connection with the Motion. (Order, p. 2.) As permitted by the Order, Taco Bueno submits this Application.

**II.
ARGUMENT AND AUTHORITIES**

A. The Standard for Attorneys' Fees.

As stated in the Order, this Court has authority to award reasonable expenses, including attorney's fees, in connection with a successful motion to compel. *See* Fed. R. Civ. P. 37(a)(5);

Tollett v. City of Kemah, 285 F.3d 357, 367 (5th Cir. 2002). Upon determining that a party is entitled to attorneys' fees and as noted in the Order, the Court should use the lodestar method to determine the amount to be awarded. *See Todd v. AIG Life Ins. Co.*, 47 F.3d 1448, 1459 (5th Cir. 1995). A court determines the lodestar amount by multiplying the reasonable number of hours expended on the litigation by a reasonable hourly rate for the participating attorneys. *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Wegner v. Standard Ins. Co.*, 129 F.3d 814, 822 (5th Cir. 1997). The resulting lodestar figure is a presumptively reasonable fee. *See In re Charter Graphic Servs., Inc.*, 230 B.R. 759, 771 (N.D. Tex. 1998); *Phillips v. Maritime Assocs.*, 198 F. Supp. 2d 838, 846 (E.D. Tex. 2002).

B. Taco Bueno is Entitled to its Attorneys' Fees in Connection with the Motion.

The Order states "the defendant may file an application setting forth the amount of reasonable expenses and attorney's fees that it seeks.... The fee application must be supported by documentation evidencing the 'lodestar' calculation, including affidavits and billing records, and citations to relevant authorities..." *See* Order, p. 2. Per the Court's Order and as set forth below, Taco Bueno's fees are calculated pursuant to the lodestar method as set forth in *Hensley v. Eckerhart*, 461 U.S. 424 (1983) and are reasonable in light of the factors set forth in *Johnson v. Georgia Highway Express*, 488 F.2d 714, 717-19 (5th Cir. 1974).

C. The Fees and Expenses Sought by Taco Bueno Are Reasonable.

1. The Lodestar Amount.

Attached to this Application as Exhibit "A" is the Declaration of Karen Denney in Support of Defendant's Application for Reasonable Expenses and Attorneys' Fees Relating to Its Motion to Compel ("Declaration"). Karen Denney is Taco Bueno's lead attorney on this matter, and the Declaration, which is further supported by invoices, sets forth the amount of expenses

and attorneys' fees incurred by Taco Bueno in connection with the Motion. Taco Bueno seeks a combined total of \$3,741.78 in reasonable and necessary expenses and attorneys' fees expended by Haynes and Boone, L.L.P. in connection with the Motion. (Ex. A, Declaration, ¶¶ 3, 5.) Additionally, the hourly rates charged by Haynes and Boone, L.L.P. for this matter are in conformity with prevailing market rates for attorneys with similar experience. (Ex. A, Declaration, ¶ 5.)

2. The *Johnson* Factors Demonstrate that the Lodestar is Reasonable.

In *Johnson*, the court set forth the factors a court should consider in determining whether to adjust the lodestar figure. Those factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Johnson*, 488 F.2d at 717-19. The factors set forth in *Johnson* are either positive (indicating an upward adjustment in the lodestar) or neutral (indicating no adjustment in the lodestar) and demonstrate that the amount sought by Taco Bueno is reasonable.

Plaintiff Juanita J. Garofalo ("Plaintiff") failed to respond in any way to Defendant's First Set of Interrogatories to Plaintiff and Defendant's First Requests for Production to Plaintiff (collectively, "Discovery Requests") that were the basis for the Motion. Though Taco Bueno attempted to confer with Plaintiff numerous times, both by letter and by telephone regarding the Discovery Requests, Plaintiff repeatedly ignored Defendant's communications regarding the

Discovery Requests. Due to Plaintiff's refusal to provide any documents or answers in response to Taco Bueno's Discovery Requests and in light of the Court's October 14, 2014 Order requiring that all discovery be completed by May 21, 2015, Taco Bueno was forced to seek relief from this Court by filing the Motion. The reasonable amount Haynes and Boone, L.L.P. has requested in expenses and attorneys' fees from this Court is the actual amount charged to Taco Bueno by the attorneys who worked on matters related to the Motion and the expenses related to the Motion. (Ex. A, Declaration, ¶¶ 3-4.) The *Johnson* factors support the reasonableness of the \$3,741.78 in expenses and attorneys' fees requested by Taco Bueno.

WHEREFORE, PREMISES CONSIDERED, Taco Bueno respectfully requests that the Court grant Taco Bueno a total of \$3,741.78 in reasonable and necessary expenses and attorneys' fees incurred by Taco Bueno in relation to the Motion and any further relief to which it may be entitled.

Respectfully submitted,

/s/ Karen C. Denney

Karen C. Denney
Texas State Bar No. 24036395
HAYNES AND BOONE, LLP
201 Main St., Suite 2200
Fort Worth, Texas 76102
Telephone: (817) 347-6616
Telecopier: (817) 348-2327

Arrissa Meyer
Texas State Bar No. 24060954
HAYNES AND BOONE, LLP
2323 Victory Avenue, Suite 700
Dallas, Texas 75219
Telephone: (214) 651-5314
Telecopier: (214) 200-0587

**ATTORNEYS FOR DEFENDANT
TACO BUENO RESTAURANTS, L.P.**

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of this document was forwarded to the following Plaintiff on this 5th day of March, 2015, as follows:

Juanita J. Garofalo
17878 Preston Rd. #195
Dallas, Texas 75252

- ☐ Certified Mail, Return Receipt Requested
- ☐ U.S. Express Mail
- ☐ Hand-Delivery
- ☐ Over-Night Delivery
- ☐ Facsimile (214) 730-0496
- ☐ E-Mail
- ☒ Electronic Case Filing System

/s/ Karen C. Denney

Karen C. Denney

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JUANITA J. GAROFALO,

Plaintiff,

v.

TACO BUENO, L.P.,

Defendant.

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Civil Action No. 3:14-cv-02616

**DECLARATION OF KAREN DENNEY IN SUPPORT OF
DEFENDANT'S APPLICATION FOR REASONABLE EXPENSES AND
ATTORNEYS' FEES RELATING TO ITS MOTION TO COMPEL**

1. My name is Karen Denney. I am fully, mentally and legally competent to make this Declaration and have personal knowledge of each of the statements and facts set forth herein or they are known to me through my duties and responsibilities as a partner with Haynes and Boone, L.L.P. providing legal representation to Defendant Taco Bueno Restaurants, L.P. ("Taco Bueno").

2. I received my Texas law license in 2002 and have been a member in good standing of the State Bar of Texas at all times since that date. I have litigated many labor and employment disputes throughout Texas and the United States of America.

3. In representing Taco Bueno in connection with Defendant's Motion to Compel Discovery and Brief in Support ("Motion"), filed on January 29, 2015, and argued on February 19, 2015, Haynes and Boone, L.L.P. has expended the following attorney hours at an hourly rate, that is discounted from the attorney's standard hourly rate, for each attorney who worked on this matter:

Haynes and Boone, L.L.P. Attorneys' Fees
Incurred In Connection With Motion

Name	Total Hours	Applicable Hourly Rate	Fee Amount
Karen Denney	.40	\$495.00	\$198.00
Karen Denney	4.00	\$508.50	\$2,034.00
Arrissa Meyer	.50	\$369.00	\$184.50
Arrissa Meyer	3.20	\$414.00	\$1,324.80
		Total	\$3,741.30

Additionally, Haynes and Boone, L.L.P. expended \$0.48 in postage sending the Court the required courtesy copy of the Motion and Plaintiff Juanita J. Garofalo ("Plaintiff") a copy of the Motion.

The foregoing amounts have been billed to Taco Bueno as set forth in the Haynes and Boone, L.L.P. billing entries attached to this Declaration. Attached as Exhibit 1 are time entries for Karen Denney and Arrissa Meyer relating to time spent on the Motion, as well as the postage expense, retrieved from the Haynes and Boone, L.L.P. accounting system and edited to remove references to information protected by the attorney-client privilege and the attorney work-product doctrine and other confidential information, such as bank account numbers.

4. The hours billed by Haynes and Boone, L.L.P. and included in Defendant's Application for Reasonable Expenses and Attorneys' Fees Relating to Its Motion to Compel (the "Application") include only those hours expended by attorneys at Haynes and Boone, L.L.P. and those expenses incurred with respect to the Motion.

5. I am familiar with attorneys' fees customarily charged by attorneys in North Texas for services similar to those provided on behalf of Taco Bueno in this proceeding. The sum of \$3,741.78 is a reasonable and necessary amount of expenses and attorneys' fees for the services performed by Haynes and Boone, L.L.P. for Taco Bueno on this matter, which specifically

include: (i) attempting to confer with Plaintiff regarding Defendant's First Set of Interrogatories to Plaintiff and Defendant's First Requests for Production to Plaintiff (collectively, "Discovery Requests"); (ii) drafting the Motion; (iii) preparing for the February 19, 2015 hearing on the Motion; and (iv) attending the February 19, 2015 hearing on the Motion. The fees Haynes and Boone, L.L.P. has charged are ones customarily charged in this area for the same or similar services for attorneys with similar experience, reputation and ability, considering factors such as the difficulty of the questions presented, the skill requisite to perform the legal service properly and any preclusion of other employment by the attorneys due to acceptance of this case.

6. I declare under penalty of perjury that the foregoing statements are true and correct.

Executed On: March 5, 2015



Karen Denney

haynesboone

Invoice Number: 21110653

January 16, 2015

Taco Bueno Restaurants, LP
[REDACTED]
[REDACTED]
[REDACTED]

Billing Attorney: Karen Coomer Denney

For Professional Services Through December 31, 2014

[REDACTED]
Juanita Garofalo EEOC Charge

Professional Fees

<u>Date</u>	<u>Timekeeper</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
12/19/14	Arrissa Meyer	Draft letter to Garofalo requesting discovery responses.	0.50	\$205.00
12/22/14	Karen Coomer Denney	Revise and finalize communication to Garofalo following up on her failure to provide responses to the discovery requests sent; [REDACTED]	0.40	\$220.00

Total Fees	\$425.00
Adjustment (10% discount)	(\$42.50)
Total Adjusted Fees	\$382.50

Timekeeper Summary

<u>Timekeeper</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Karen Coomer Denney	Partner	0.40	\$550.00	\$220.00
Arrissa Meyer	Associate	0.50	\$410.00	\$205.00
Total Professional Summary				\$425.00



Taco Bueno Restaurants, LP
Invoice Number: 21110653
[REDACTED]

January 16, 2015
Page 2

Expenses

<u>Date</u>	<u>Code</u>	<u>Description</u>	<u>Amount</u>
11/05/14	OLR	LexisNexis Risk Solutions (Accurint)	\$25.15
11/05/14	PSC	Pacer Service Center	\$1.50
Total Expenses			\$26.65

Expenses Summary

<u>Description</u>	<u>Amount</u>
On-line Legal Research	\$25.15
Pacer Service Center	\$1.50
Total Expenses	\$26.65

Total Fees, Expenses and Charges **\$409.15**

Total Amount Due **USD \$409.15**

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Juanita Garofalo EEOC Charge
Billing Attorney: Karen Coomer Denney

REMITTANCE PAGE
For Professional Services Through December 31, 2014

Total Fees	\$425.00
Adjustment (10% discount)	(\$42.50)
Total Adjusted Fees	\$382.50
Total Expenses	\$26.65
Total Fees, Expenses and Charges	\$409.15
Total Invoice Balance Due	USD \$409.15

Remit to:
Haynes and Boone LLP
P.O. Box 841399
Dallas, TX 75284-1399

Tax Identification No: [REDACTED]

WIRING INSTRUCTIONS FOR OPERATING ACCOUNT

Any bank wire fees are the responsibility of the sender.
BANK OF AMERICA 100 West 33rd Street New York, NY 10001
For Credit to the Account of HAYNES AND BOONE, LLP
ABA NO. [REDACTED] Operating Account No.: [REDACTED]

SWIFT Address: [REDACTED]

For ACH Payments

For Credit to the Account of HAYNES AND BOONE, LLP
ABA NO. [REDACTED] Operating Account No.: [REDACTED]
Please Reference Invoice Number: 21110653
Responsible Attorney: **Karen Coomer Denney**
[REDACTED]

haynesboone

Invoice Number: 21114422

February 13, 2015

Taco Bueno Restaurants, LP
[REDACTED]
[REDACTED]
[REDACTED]

Billing Attorney: Karen Coomer Denney

For Professional Services Through January 31, 2015

[REDACTED]
Juanita Garofalo EEOC Charge

Professional Fees

<u>Date</u>	<u>Timekeeper</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
01/07/15	Karen Coomer Denney	Leave communication for Garofalo following up on the discovery requests sent and the letter concerning same in preparation to draft a Motion to Compel.	0.10	\$56.50
01/09/15	Karen Coomer Denney	Leave communication for Garofalo following up on her failure to provide responses to the Interrogatories and Requests for Production.	0.20	\$113.00
01/09/15	Arrissa Meyer	Draft Defendant's Motion to Compel Discovery Responses.	3.20	\$1,472.00
01/23/15	Karen Coomer Denney	Review communication from the Texas Workforce Commission seeking additional information relating to the Texas Open Records Act request; prepare additional communication to the Texas Workforce Commission concerning same.	0.30	\$169.50
01/29/15	Karen Coomer Denney	Revise and finalize Motion to Compel for filing; [REDACTED]; file Motion to Compel; revise and finalize communication providing the required courtesy copy for the Court; revise and finalize communication providing the Motion to Compel to Plaintiff; [REDACTED].	2.40	\$1,356.00
01/30/15	Karen Coomer Denney	Review Order setting the Motion to Compel for hearing; [REDACTED]; [REDACTED]; [REDACTED]; leave communication for Court Coordinator confirming attendance at hearing as required by the Order.	0.30	\$169.50

Taco Bueno Restaurants, LP
Invoice Number: 21114422
[REDACTED]

February 13, 2015
Page 2

Total Fees	\$3,336.50
Adjustment (10% discount)	(\$333.65)
Total Adjusted Fees	\$3,002.85

Timekeeper Summary

<u>Timekeeper</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Karen Coomer Denney	Partner	3.30	\$565.00	\$1,864.50
Arrissa Meyer	Associate	3.20	\$460.00	<u>\$1,472.00</u>
Total Professional Summary				\$3,336.50

Taco Bueno Restaurants, LP
 Invoice Number: 21114422
 [REDACTED]

February 13, 2015
 Page 3

Expenses

<u>Date</u>	<u>Code</u>	<u>Description</u>	<u>Amount</u>
01/12/15	LEX	LEXIS LEGAL SERVICES - DOCUMENT PRINTING	\$31.98
01/12/15	LEX	LEXIS LEGAL SERVICES - SINGLE DOCUMENT RETRIEVAL	\$287.82
01/12/15	LEX	SHEPARD'S SERVICE - LEGAL CITATION SERVICES	\$18.66
Total Expenses			\$338.46

Expenses Summary

<u>Description</u>	<u>Amount</u>
Lexis	\$338.46
Total Expenses	\$338.46

Total Fees, Expenses and Charges **\$3,341.31**

Total Amount Due **USD \$3,341.31**

Taco Bueno Restaurants, LP
 Invoice Number: 21114422
 [REDACTED]

February 13, 2015

Taco Bueno Restaurants, LP
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

Juanita Garofalo EEOC Charge
 Billing Attorney: Karen Coomer Denney

REMITTANCE PAGE
For Professional Services Through January 31, 2015

Total Fees	\$3,336.50
Adjustment (10% discount)	(\$333.65)
Total Adjusted Fees	\$3,002.85
Total Expenses	\$338.46
Total Fees, Expenses and Charges	\$3,341.31
Total Invoice Balance Due	USD \$3,341.31

Remit to:

Haynes and Boone LLP
 P.O. Box 841399
 Dallas, TX 75284-1399

Tax Identification No: [REDACTED]

WIRING INSTRUCTIONS FOR OPERATING ACCOUNT

Any bank wire fees are the responsibility of the sender.
 BANK OF AMERICA 100 West 33rd Street New York, NY 10001
 For Credit to the Account of HAYNES AND BOONE, LLP

ABA NO. [REDACTED] Operating Account No.: [REDACTED]

SWIFT Address: [REDACTED]

For ACH Payments

For Credit to the Account of HAYNES AND BOONE, LLP
 ABA NO. [REDACTED] Operating Account No.: [REDACTED]

Please Reference Invoice Number: 21114422
 Responsible Attorney: **Karen Coomer Denney**
 [REDACTED]

haynesboone

Invoice Number: 21116832

March 05, 2015

Taco Bueno Restaurants, LP

Employer Identification No. [REDACTED]

Billing Attorney: Karen Coomer Denney

For Professional Services Through February 28, 2015

Juanita Garofalo EEOC Charge

Professional Fees

<u>Date</u>	<u>Timekeeper</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
02/19/15	Karen Coomer Denney	Prepare draft Order Granting Motion to Compel; prepare for and attend hearing on Motion to Compel; review Order Granting Motion to Compel; [REDACTED]	1.80	\$1,017.00

Total Fees	\$1,017.00
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Adjustment (10% discount)	(\$101.70)
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Total Adjusted Fees	\$915.30
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Timekeeper Summary

<u>Timekeeper</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Karen Coomer Denney	Partner	1.80	\$565.00	\$1,017.00
Total Professional Summary				\$1,017.00

Haynes and Boone, LLP
 Attorneys and Counselors
 2505 North Plano Road, Suite 4000
 Richardson, Texas 75082-4101
 Phone: 972.680.7550
 Fax: 972.680.7551
 www.haynesboone.com

Taco Bueno Restaurants, LP
Invoice Number: 21116832
[REDACTED]

March 05, 2015
Page 2

Expenses

<u>Date</u>	<u>Code</u>	<u>Description</u>	<u>Amount</u>
01/29/15	POS	POSTAGE	\$0.48
Total Expenses			\$0.48

Expenses Summary

<u>Description</u>	<u>Amount</u>
Postage	\$0.48
Total Expenses	\$0.48

Total Fees, Expenses and Charges **\$915.78**

Total Amount Due **USD \$915.78**

Taco Bueno Restaurants, LP
Invoice Number: 21116832
[REDACTED]

March 05, 2015

Taco Bueno Restaurants, LP
[REDACTED]
[REDACTED]

Juanita Garofalo EEOC Charge
Billing Attorney: Karen Coomer Denney

REMITTANCE PAGE

For Professional Services Through February 28, 2015

Total Fees	\$1,017.00
Adjustment (10% discount)	(\$101.70)
Total Adjusted Fees	\$915.30
Total Expenses	\$0.48
Total Fees, Expenses and Charges	\$915.78
Total Invoice Balance Due	USD \$915.78

Remit to:

Haynes and Boone LLP
P.O. Box 841399
Dallas, TX 75284-1399

Tax Identification No: [REDACTED]

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BANK OF AMERICA 100 West 33rd Street New York, NY 10001

For Credit to the Account of HAYNES AND BOONE, LLP

ABA NO. [REDACTED] Operating Account No.: [REDACTED]

SWIFT Address: [REDACTED]

For ACH Payments

For Credit to the Account of HAYNES AND BOONE, LLP

ABA NO. [REDACTED] Operating Account No.: [REDACTED]

Please Reference Invoice Number: 21116832

Responsible Attorney: Karen Coomer Denney
[REDACTED]